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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Terex Cranes, Inc.

**File:** B-276380

**Date:** June 10, 1997

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Ronald S. Perlman, Esq., and Frederick P. Hink, Esq., Porter, Wright, Morris & Arthur, for the protester.

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## DIGEST

1. Protest that contracting agency unreasonably evaluated protester's proposed technical manual development program as representing a high risk for delaying the fielding of the cranes to be acquired under the solicitation at issue is denied where the record shows that the evaluation was reasonable and consistent with the terms of the solicitation.

2. Post-award protest that contracting agency's price evaluation improperly included the pricing for some of the protester's "special tools" is untimely where the solicitation and the model contract, which was to be submitted as part of the protester's best and final offer (BAFO), put the firm on notice that the agency would conduct the pricing evaluation as it did; as a result, the protester was required to raise this issue, at the latest, prior to the time for receipt of BAFOs.

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## DECISION

Terex Cranes, Inc. protests the award of a contract to Grove North America under request for proposals (RFP) No. DAAE07-96-R-X001, issued by the Department of the Army for all-terrain cranes. Terex argues that the Army improperly evaluated its proposal.

We deny the protest.

The solicitation was issued to acquire commercially available cranes with design changes limited to those necessary to meet specified military and federally mandated requirements. The RFP anticipated the award of a fixed-price, 5-year requirements contract for between 240 and 464 cranes and their associated support requirements. For evaluation purposes, pricing was based upon a quantity of 160 cranes.

Award would be made to the offeror whose proposal represented the best value to the government, considering logistics, price, technical, and past performance areas, listed in descending order of importance.<sup>1</sup> The only nonprice evaluation area at issue in this protest is the logistics area's maintainability factor, comprised of two equally important subfactors, manuals and maintenance actions.

The Army evaluated the three proposals it received and established a competitive range of three proposals. After discussions were concluded, the offerors were given model contracts, tailored to their proposals, which were to serve as the principal portion of their respective best and final offers (BAFO). The final evaluation results were as follows:

	<b>Grove</b>	<b>Terex</b>
<b>Logistics</b>	<b>Good/Low Risk</b>	<b>Marginal/High Risk</b>
1. Supportability	Excellent/Very Low Risk	Adequate/Moderate Risk
2. Maintainability	Good/Low Risk	Marginal/High Risk
a. Manuals	Good/Low Risk	Marginal/High Risk
b. Maintenance Actions	Good/Low Risk	Marginal/High Risk
<b>Price</b>	<b>\$42,655,623</b>	<b>\$42,676,623</b>
<b>Technical</b>	<b>Excellent/Very Low Risk</b>	<b>Adequate/Moderate Risk</b>
<b>Past Performance</b>	<b>Good/Low Risk</b>	<b>Excellent/Very Low Risk</b>

The source selection authority determined that Grove had submitted the lowest-priced, technically superior proposal,<sup>2</sup> and that its proposal represented the best value to the government. Among numerous concerns with Terex's proposal, the Army considered its commercial manuals to be so unusable for the purpose of military logistics support that new manuals in Department of the Army Technical Manual (DATM) format would have to be developed. The Army believed that this shortcoming was a "very significant deficiency" because it would significantly delay

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<sup>1</sup>Offerors were also required to provide sample cranes for a go/no go compliance demonstration, the results of which are not at issue here.

<sup>2</sup>The proposal of the third offeror was considered to be technically equal to Grove's, but at a much higher price.

fielding of the cranes. After it received its debriefing on February 27, 1997, Terex filed this protest.

Terex argues that the Army unreasonably concluded that its offered technical manual development program represents a high risk for delaying the fielding of the cranes.<sup>3</sup>

Our Office will not engage in an independent evaluation of proposals nor make an independent determination of their relative merits. Litton Sys., Inc., B-239123, Aug. 7, 1990, 90-2 CPD ¶ 114 at 9. Rather, we review the agency's evaluation only to ensure that it was reasonable and consistent with the terms of the solicitation. Sensis Corp., B-265790.2, Jan. 17, 1996, 96-1 CPD ¶ 77 at 6. A protester's mere disagreement with the agency's conclusions does not render the evaluation unreasonable. ESCO, Inc., 66 Comp. Gen. 404, 410 (1987), 87-1 CPD ¶ 450 at 7. The record here shows that Terex's protest merely expresses its disagreement with the agency's evaluation and provides no basis to question the agency's judgment.

Offerors were required to provide two complete sets of commercial manuals which were to include a description of the offered crane's maintenance and repair procedures. The RFP advised that these manuals would be evaluated under the manuals subfactor to determine their usability in the military logistics support system, the extent of supplementation that they required, and their availability to support fielding of the cranes. The RFP further stated that the risk of meeting the fielding schedule would be increased as the need for supplementation of existing commercial manuals was increased, or as the need to write full DATMs was made apparent.<sup>4</sup>

The rationale for inclusion of this evaluation subfactor in the RFP--which was clearly spelled out to Terex during the course of the procurement--is as follows. The Army maintains its own equipment on four maintenance levels--unit, direct support, general support, and depot. Each level provides for an increasing level of maintenance and repair expertise to support Army equipment, and equipment manuals must support maintenance at each level. As a result, manuals used by the

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<sup>3</sup>In its April 16 comments, Terex also challenged the Army's conclusion that its manuals were unusable. Since Terex was apprised of this conclusion at its February 27 debriefing, but did not raise the issue until nearly 2 months later, its protest is untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1997) (protests of other than alleged solicitation improprieties must be filed not later than 10 days after the basis of protest is known or should have been known or after a required debriefing).

<sup>4</sup>Hence, Terex is mistaken when it argues that the risk of meeting the fielding schedule was an unstated evaluation factor.

Army must be more detailed and all-encompassing than typical commercial manuals.

Accordingly, when the Army acquires equipment, all of the supporting technical documentation for that equipment goes through a "provisioning" process which allows for its input into a database that permits maintenance and supply personnel to monitor, maintain, and manage each and every piece part of the equipment. Provisioning begins by gathering the supporting technical data and submitting it in 1,500 part increments to the Defense Logistic Service Center, which assigns each part a national stock number if one is not already assigned. The increments are then reviewed at provisioning conferences which usually start 120 days after the contract is awarded and occur every 45 days until each part of the equipment has been provisioned. Provisioning results in a Repair Parts and Special Tools List (RPSTL) which contains all of an item's parts and illustrations.

The requirement to obtain an RPSTL drives the technical manual delivery schedule. If an offeror need only supplement its commercial manuals,<sup>5</sup> the delivery schedule is often relatively short--once the parts have been approved through provisioning, they are screened against the commercial manual to see if they are accounted for in its maintenance procedures and, if they are, the process ends. If the parts are not accounted for in the offeror's maintenance procedures, or if, as here, new manuals must be developed, the parts data is forwarded to the contractor's technical writers who then begin to develop supporting maintenance procedures. To do so, the contractor must first embark upon the labor-intensive and time-consuming task of gathering technical information from a multitude of internal manufacturer and external vendor sources, all of which may be located in many different areas. It is only after this information is gathered that the technical writers can begin the iterative task of drafting the manuals.

The Army states that all technical manuals procured in support of Army equipment must be validated and verified. Validation, which requires the contractor to verify the technical accuracy of its manual by actually performing the maintenance and operating procedures on a crane, is begun 60 days after completion of the final provisioning conference. If an offeror is merely supplementing its commercial manuals, validation is only necessary for the supplemental information. However, if an offeror is developing new manuals, the entirety of the documents must be validated. In the final step, the government must verify the usability and suitability of the technical manuals for the soldier.

The record is clear that Terex was not fully cooperative with the Army's efforts to evaluate its proposal under the manuals subfactor. Contrary to the solicitation's

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<sup>5</sup>Army regulation requires that DATMs be developed if the extent of the supplementation required exceeds 50 percent of the commercial manuals.

requirements, the firm did not submit a maintenance manual or maintenance procedures for use above the operator or unit level. Terex advised the Army that its maintenance manual for the offered crane was written in French and that a translation would not be provided unless Terex were awarded the contract. The Army ascertained that the amount of supplementation required for the commercial manuals that Terex did submit was approximately 80 percent, and that DATMs would have to be developed. Terex acknowledged this fact during discussions, but proposed what the Army considered to be an impossible revised data delivery schedule. The schedule provided in Terex's BAFO was extended, but, in the final evaluation, the Army considered even this lengthy schedule to be unrealistically short.

Hence, Terex's proposal was rated marginal/high risk under the manuals subfactor because its manuals were unusable for military logistics support and required the development of DATMs. The Army considered this to be a very significant deficiency because the process of developing DATMs, outlined above, is so time-consuming and expensive, and the most realistic data delivery schedule for Terex would result in delaying the fielding for nearly a year. Terex's proposal represented the "highest possible risk" of having completed manuals to support the scheduled fielding.

Terex argues that the Army's concern over the risk of delayed fielding is unwarranted since it offered to provide a French translation of its manuals if it were awarded the contract, and these manuals "would suffice" until DATMs were available. However, the Army is not required to assume the risk posed by Terex's business decision to withhold its manual in contravention of the RFP's requirements. It was for the Army, not Terex, to decide whether the firm's manuals "would suffice," and Terex did not give the Army the opportunity to make that decision. As the contracting officer states, Terex's suggestion would result in the award of a contract without a definitive scope of work for the maintenance manual since the Army would not know the extent of the supplementation required or whether DATMs would be required until after the translation and evaluation by the government.

Terex also argues that the draft DATMs could be completed early and used for early fielding prior to validation. This argument is premised upon the wholly unwarranted assumption that the draft DATMs will be completed "early." Moreover, even setting aside the Army's statement that 100 percent validation is required for its technical manuals, the Army could hardly be faulted for any reluctance to field a crane with an unknown, untested, draft maintenance manual. Under these circumstances, we think the Army's evaluation of Terex's proposal here was clearly reasonable.

In its protest, Terex also challenged the Army's evaluation of its proposal under the maintenance actions subfactor because Terex's modern equipment was allegedly not

given the proper credit it deserves vis-a-vis the older equipment offered by Grove. In its report, the agency fully addressed these arguments. Because Terex did not respond to the agency's position as to these issues in its comments on the agency report, we consider them to have been abandoned. Hadley Exhibits, Inc., B-274346, Nov. 5, 1996, 96-2 CPD ¶ 172 at 4 n.1. Terex's comments did raise new allegations with respect to its evaluation under the maintenance actions subfactor concerning, among other things, the number of unscheduled maintenance actions its crane would require due to its complex suspension and steering system and problems caused by the need to remove the crane's cab outer-structure for transportability. These allegations are untimely.

Terex received the agency report on this protest on April 4, 1997, and filed its comments on April 16--12 days later. While Terex received permission to file its comments later than the 10 calendar days required by our Bid Protest Regulations, 4 C.F.R. § 21.3(i), the granting of such an extension does not waive the timeliness requirements for filing bid protests. Cygnus Corp., B-275181, Jan. 29, 1997, 97-1 CPD ¶ 63 at 4 n.2. Where, as here, the later-raised bases of protest present new and independent grounds of protest, they must independently meet our timeliness requirements. Ralph G. Moore & Assocs.--Recon., B-270686.3, June 5, 1996, 96-1 CPD ¶ 268 at 2; GE Gov't Servs., B-235101, Aug. 11, 1989, 89-2 CPD ¶ 128 at 4. Since these allegations were filed 12 days after the basis of protest was known, they are untimely. 4 C.F.R. § 21.2(a)(2); Cygnus Corp., supra.

Terex finally argues that the Army's price evaluation improperly included pricing for some of the items reflected in its "special tools" contract line items (CLIN). Terex contends that the Army does not require the tools for its crane's engine and transmission because they are already in inventory, and that, in any event, the Army does not require a set of special tools for each crane. This argument is also untimely.

Offerors were required to identify all tools and equipment required to maintain their proposed crane. Pursuant to section C.5.8. of the RFP, the Army would review this list to determine if any of the tools were "special tools"; that is, not already in the Army's inventory. Tools identified as special tools for each offeror's particular crane would be added to that offeror's model contract. The contractor was required to price a set of these special tools for each crane. The solicitation contained five separate CLINs for special tools, one for each contract year, for a total of 160 special tools sets.

Protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals shall be filed prior to that time. 4 C.F.R. § 21.2(a)(1). Alleged solicitation improprieties which arise after the initial closing date must be protested not later than the next closing time for receipt of proposals following the incorporation of the alleged impropriety. Id. Aside from the solicitation itself, Terex's review of the model contract and special tools list,

which were to be submitted as part of its BAFO, put the firm on notice that the Army's price evaluation would include the firm's pricing under the special tools CLINs; that these CLINs were for a total of 160 special tools sets; and that the special tools list included tools for its crane's engine and transmission. Terex's protest is untimely because its concerns should have been raised, at the very latest, prior to the time for receipt of BAFOs. Id.; Harris Corp., B-274566; B-274566.2, Nov. 27, 1996, 96-2 CPD ¶ 205 at 7.

The protest is denied.

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of the United States